U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF H-O-H-G- INC

DATE: FEB. 15, 2019

APPEAL OF NEBRASKA SERVICE CENTER DECISION

PETITION: FORM I-140A, IMMIGRANT PETITION FOR ALIEN WORKER

The Petitioner, a gymnastics school, seeks to classify the Beneficiary as an individual of extraordinary ability in athletics. *See* Immigration and Nationality Act (the Act) section 203(b)(1)(A), 8 U.S.C. § 1153(b)(1)(A). This first preference classification makes immigrant visas available to those who can demonstrate their extraordinary ability through sustained national or international acclaim and whose achievements have been recognized in their field through extensive documentation.

The Director of the Nebraska Service Center denied the Form I-140, Immigrant Petition for Alien Worker, concluding that the Petitioner established that the Beneficiary had satisfied only one of the ten initial evidentiary criteria, of which he must meet at least three.

On appeal, the Petitioner submits a brief and asserts that the Beneficiary meets at least three of the ten criteria.

Upon *de novo* review, we will dismiss the appeal.

I. LAW

Section 203(b)(1)(A) of the Act makes visas available to immigrants with extraordinary ability if:

> (i) the alien has extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim and whose achievements have been recognized in the field through extensive documentation,
>
> (ii) the alien seeks to enter the United States to continue work in the area of extraordinary ability, and
>
> (iii) the alien's entry into the United States will substantially benefit prospectively the United States.

The term "extraordinary ability" refers only to those individuals in "that small percentage who have risen to the very top of the field of endeavor." 8 C.F.R. § 204.5(h)(2). The implementing regulation at 8 C.F.R. § 204.5(h)(3) sets forth two options for satisfying this classification's initial evidence requirements. First, a petitioner can demonstrate a one-time achievement (that is, a major, internationally recognized award). If that petitioner does not submit this evidence, then he or she must provide documentation that meets at least three of the ten categories listed at 8 C.F.R. § 204.5(h)(3)(i) – (x) (including items such as awards, published material in certain media, and scholarly articles). The regulation at 8 C.F.R. § 204.5(h)(4) allows a petitioner to submit comparable material if he or she is able to demonstrate that the standards at 8 C.F.R. § 204.5(h)(3)(i)-(x) do not readily apply to the individual's occupation.

Where a petitioner meets these initial evidence requirements, we then consider the totality of the material provided in a final merits determination and assess whether the record shows sustained national or international acclaim and demonstrates that the individual is among the small percentage at the very top of the field of endeavor. *See Kazarian v. USCIS*, 596 F.3d 1115 (9th Cir. 2010) (discussing a two-part review where the documentation is first counted and then, if fulfilling the required number of criteria, considered in the context of a final merits determination); *see also Visinscaia v. Beers*, 4 F. Supp. 3d 126, 131-32 (D.D.C. 2013); *Rijal v. USCIS*, 772 F. Supp. 2d 1339 (W.D. Wash. 2011). This two-step analysis is consistent with our holding that the "truth is to be determined not by the quantity of evidence alone but by its quality," as well as the principle that we examine "each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, to determine whether the fact to be proven is probably true." *Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010).

II. ANALYSIS

The Beneficiary previously competed as a gymnast until 2015. In 2015, he also served as the assistant coach for [redacted] Since then, he has served as a coach for the Petitioner as well as a volunteer coach for the [redacted] men's gymnastics team.[2] Because the Petitioner has not indicated or established that the Beneficiary has received a major, internationally recognized award, he must satisfy at least three of the alternate regulatory criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x). In denying the petition, the Director found that the Beneficiary met only one of the initial evidentiary criteria.

On appeal, the Petitioner maintains that the Beneficiary satisfies five of the alternate regulatory criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x).

[1] The record also refers to this team as the [redacted]

[2] The record demonstrates that the Beneficiary was granted O-1 status and issued a visa in November 2016.

A. Evidentiary Criteria

Documentation of the alien's receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor. 8 C.F.R. § 204.5(h)(3)(i).

The Director acknowledged the Beneficiary's receipt of multiple awards at gymnastics competitions, but found that the record did not demonstrate that the awards are nationally or internationally recognized. Specifically, he stated that, as these awards were "limited to members of that association and participants of that competition… such evidence has no probative value for meetings this criterion."

As discussed by the Director, the record contains evidence demonstrating that the Beneficiary received 1st place as a member of the team representing Japan at the 2010 , 3rd place all-around at the in 2012, 2nd place, horizontal bar, at the 2013 , 3rd place overall at the 2013 and 1st place, horizontal bar, at the 2014 Further, although not mentioned by the Director, the record also shows that, among other awards, the Beneficiary was a member of the Japanese team receiving 2nd place at the in 2010. We find the record sufficient to demonstrate that the Beneficiary has won awards that are nationally or internationally recognized for excellence in gymnastics. Accordingly, we disagree with the Director's decision and find that the Beneficiary meets this criterion.

Documentation of the alien's membership in associations in the field for which classification is sought, which require outstanding achievements of their members, as judged by recognized national or international experts in their disciplines or fields. 8 C.F.R. § 204.5(h)(3)(ii).

In order to meet this criterion, the Petitioner must show that the Beneficiary's membership in an association is based on being judged by recognized national or international experts as having outstanding achievements in the field for which the classification is sought.[3] The Director stated that the Petitioner had provided evidence of the Beneficiary's membership on teams and in the . However, he found that the record lacked evidence establishing that membership in these associations required outstanding achievements of their members, as judged by recognized national or international experts in their disciplines or fields. *See* 8 C.F.R. § 204.5(h)(3)(ii).

On appeal, the Petitioner asserts that the Beneficiary's membership on the and the meet the regulatory requirement for this criterion. The record indicates that the Beneficiary participated in teams representing Japan at various events and it includes a 2012 certificate from the recognizing him as a national athlete.

[3] *See* USCIS Policy Memorandum PM 602-0005.1, *Evaluation of Evidence Submitted with Certain Form I-140 Petitions; Revisions to the Adjudicator's Field Manual (AFM) Chapter 22.2, AFM Update AD11-14* 6 (Dec. 22, 2010), https://www.uscis.gov/policymanual/HTML/PolicyManual.html.

However, the Petitioner has not provided supporting documentation regarding the [redacted] its membership selection process and requirements, or the Beneficiary's membership on this team. We note, for instance, that the submitted support letters, including letters from the Chairman and the Secretary General of the [redacted] reference his membership on "the Japanese team" that won second prize in [redacted] Netherlands in 2010, but they do not identify this team or discuss its membership process or requirements. The Petitioner argues that the Director "ignored the selectivity of both **the [redacted] which is limited to the top 16 gymnasts in Japan, and the [redacted] which is limited to eleven gymnasts.**" (Emphasis in original). However, the record lacks corroborative evidence demonstrating these limitations, or other materials demonstrating the process by which the Beneficiary was selected to be a member of these teams.

In its appeal brief, the Petitioner cites to *In re Petitioner [Identifying Information Redacted by Agency]*, No. EAC-00-139-52808, 2003 WL 23194168 (DHS) (AAO Sept. 29, 2003), a non-precedent Administrative Appeals Office decision finding in which we found that membership on an [redacted] team met the association criterion "because such membership is the result of multi-level national competition, supervised by national experts." The Petitioner has not sufficiently documented the membership processes for the Japanese teams on which he competed or the [redacted] to demonstrate their similarity to the [redacted] team discussed in the cited case. Furthermore, this decision was not published as a precedent and therefore does not bind USCIS officers in future adjudications. See 8 C.F.R. § 103.3(c). Non-precedent decisions apply existing law and policy to the specific facts of the individual case, and may be distinguishable based on the evidence in the record of proceedings, the issues considered, and applicable law and policy.

The Petitioner further argues that in another non-precedent decision, *Matter of C-K-*, ID #1223184 (AAO Apr. 27, 2018), we found that "the petitioner's qualification for his country's national water ski team satisfied the criterion for membership." In that decision, we noted that "the Petitioner provided additional evidence of the requirements to be selected for [his country's] national water ski team." We found "[t]he Petitioner [had] submitted sufficient evidence demonstrating that [his country's] national water ski team requires outstanding achievements by its members as a prerequisite for joining the team." In the instant case, the Petitioner submits a certificate, referenced above, showing that the Beneficiary was recognized as a national athlete in 2012, as well as certificates from the [redacted] showing him eligible for [redacted] training in 2012 and 2007. However, the Petitioner has not submitted evidence sufficient to demonstrate the requirements for these certifications included outstanding achievements, as was done in the referenced decision.

The Petitioner also asserts on appeal that the Director "inexplicable ignored" Beneficiary's selection as a [redacted] by the [redacted] in 2010. However, the Petitioner does not provide supporting evidence demonstrating that outstanding achievements, as judged by recognized national or international experts, are required for selection as a [redacted]. For the reasons discussed above, the Petitioner has not established that the Beneficiary meets the regulatory requirement for this criterion.

> *Published material about the alien in professional or major trade publications or other major media, relating to the alien's work in the field for which classification is sought. Such evidence shall include the title, date, and author of the material, and any necessary translation.* 8 C.F.R. § 204.5(h)(3)(iii).

The Director previously determined that the Petitioner submitted sufficient evidence to satisfy this criterion. We disagree and withdraw the Director's findings on this criterion. In the appellate brief, the Petitioner lists 14 articles which it asserts establish that the Beneficiary's eligibility for this criterion. The record, however, does not include sufficient evidence to demonstrate that the Petitioner provided published material about the Beneficiary in professional or major trade publications or other major media, which included the title, date, and author.[4] Eight of these 14 articles are in the Japanese language with uncertified English translations. Any document in a foreign language must be accompanied by a full English language translation. 8 C.F.R. § 103.2(b)(3). The translator must certify that the English language translation is complete and accurate, and that the translator is competent to translate from the foreign language into English. *Id.* Because the Petitioner did not submit a properly certified English language translation of these documents, we cannot meaningfully determine whether the translated material is accurate and thus supports the Petitioner's claims. In addition, we note that the Petitioner indicates these articles were published in *Mainichi Shimbun* and *Osaka Nichinichi Shimbun*, but that the record lacks documentation corroborating its assertions that these publications are major media.

Five of the remaining six English language articles provide coverage of gymnastics competitions where the Petitioner is only briefly mentioned or listed as a competitor. Articles that are not about a petitioner do not meet this regulatory criterion. *See, e.g., Negro-Plumpe v. Okin*, 2:07-CV-820-ECR-RJJ at *1, *7 (D. Nev. Sept. 8, 2008) (upholding a finding that articles regarding a show are not about the actor. The sixth article, published in *International Gymnast*, is about the Beneficiary and discusses an injury he sustained during training, however the record lacks sufficient evidence to demonstrate the major status of this publication. In support of its assertion that *International* Gymnast qualifies as major media, the Petitioner quotes the publication's press kit stating that the publication "is the most widely read gymnastics magazine in the world and is received in more than 50 countries." The Petitioner also states that "pass-along readership is estimated 40,000-50,000, with digital circulation of 10,000 hits daily." However, USCIS need not rely on the self-promotional material of the publisher. *See Braga v. Poulos*, No. CV 06 5105 SJO (C. D. CA July 6, 2007) *aff'd* 2009 WL 604888 (9th Cir. 2009) (concluding that self-serving assertions on the cover of a magazine as to the magazine's status is not reliable evidence of major media).

For the reasons discussed above, the Petitioner has not met its burden in demonstrating that the Beneficiary meets the requirements of this criterion. We will withdraw the Director's finding on this criterion.

[4] *See also* USCIS Policy Memorandum PM 602-0005.1, *supra*, at 7.

Evidence of the alien's original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field. 8 C.F.R. § 204.5(h)(3)(v).

In order to satisfy the regulation at 8 C.F.R. § 204.5(h)(3)(v), a petitioner must establish that not only has he made original contributions but that they have been of major significance in the field. For example, a petitioner may show that the contributions have been widely implemented throughout the field, have remarkably impacted or influenced the field, or have otherwise risen to a level of major significance in the field. The Petitioner asserts that the Beneficiary's "unique ability to execute a sequence of difficult release moves on the horizontal bar" qualifies him for this criterion. The Petitioner notes that the record includes a letter written by an champion, stating that the Beneficiary "is the first and only gymnast who on high bar."[5] also notes that the Beneficiary's ability is "truly astounding and it is a big feat in men's gymnastics." Letters from the Chairman and from the Secretary General of the respectively, also state that the Beneficiary "is the only person in the world who can perform high difficulty combination series...."[6] These letters do not demonstrate how the Beneficiary's performance of this skill has been a contribution of major significance to the field. Letters that specifically articulate how the alien's contributions are of major significance to the field and its impact on subsequent work add value. Letters that lack specifics and simply use hyperbolic language do not add value, and are not considered to be probative evidence that may form the basis for meeting this criterion.[7]

The Petitioner further asserts that the Beneficiary meets this criterion because of his "general recognition as a world-renowned gymnast and coach." The record contains several letters attesting to his status in the field.[8] For example, a letter from says, "[The Beneficiary] was regarded as one of the best gymnasts in the world in recent years, competing in numerous for However, these letters do not demonstrate how this general recognition constitutes a major original contribution to the field of gymnastics.

For the reasons discussed above, the Petitioner has not established that the Beneficiary meets the requirements for this criterion.

Evidence that the alien has performed in a leading or critical role for organizations or establishments that have a distinguished reputation. 8 C.F.R. § 204.5(h)(3)(viii).

The Petitioner contends that the Beneficiary qualifies for this criterion based on his role in leading the Japanese teams to second place finishes at the 2012 and the 2010 It further argues that the Beneficiary played "a critical and leading

[5] We note that the Petitioner also provided photographs of the Beneficiary performing this skill.
[6] Elsewhere in the record, writes that he is now "able to perform [the Beneficiary]'s high bar release combination skills."
[7] USCIS Policy Memorandum PM 602-0005.1, *supra*, at 9.
[8] Although we discuss only one letter, we have reviewed and considered each one.

role in the elite [redacted] and that he "has continued to play a critical and leading role since his retirement from competition in 2015." As it relates to a leading role, the evidence must establish that a petitioner is or was a leader. A title, with appropriate matching duties, can help to establish if a role is or was, in fact, leading.[9] Regarding a critical role, the evidence must demonstrate that a petitioner has contributed in a way that is of significant importance to the outcome of the organization or establishment's activities. It is not the title of a petitioner's role, but rather the performance in the role that determines whether the role is or was critical.[10]

The Petitioner asserts that the Beneficiary's performance at the 2010 [redacted] contributed significantly to the Japanese team's silver medal there, noting that he "earned the second-highest score for [redacted] and the highest of any gymnast on any team on the [redacted]" The record contains evidence corroborating this assertion. This evidence is sufficient to demonstrate that the Beneficiary's athletic performance played a critical role in the team's success at the 2010 [redacted] Accordingly, we find that the Petitioner has established that the Beneficiary meets this criterion.

B. O-1 Nonimmigrant Status

We note that the record reflects that the Beneficiary received O-1 status, a classification reserved for nonimmigrants of extraordinary ability. Although USCIS has approved at least one O-1 nonimmigrant visa petition filed on behalf of the Beneficiary, the prior approval does not preclude USCIS from denying an immigrant visa petition which is adjudicated based on a different standard – statute, regulations, and case law. Many Form I-140 immigrant petitions are denied after USCIS approves prior nonimmigrant petitions. *See, e.g., Q Data Consulting, Inc. v. INS*, 293 F. Supp. 2d 25 (D.D.C. 2003); *IKEA US v. US Dept. of Justice*, 48 F. Supp. 2d 22 (D.D.C. 1999); *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103, 1108 (E.D.N.Y. 1989), *aff'd*, 905 F. 2d 41 (2d. Cir. 1990). Furthermore, our authority over the USCIS service centers, the office adjudicating the nonimmigrant visa petition, is comparable to the relationship between a court of appeals and a district court. Even if a service center director has approved a nonimmigrant petition on behalf of an individual, we are not bound to follow that finding in the adjudication of another immigration petition. *Louisiana Philharmonic Orchestra v. INS*, No. 98-2855, 2000 WL 282785, at *2 (E.D. La. 2000).

III. CONCLUSION

The Petitioner has not submitted the required initial evidence of either a one-time achievement or documents that meet at least three of the ten criteria. As a result, we need not provide the type of final merits determination referenced in *Kazarian*, 596 F.3d at 1119-20. Nevertheless, we advise that we have reviewed the record in the aggregate, concluding that it does not support a finding that the Petitioner has established the acclaim and recognition required for the classification sought. For

[9] *Id.* at 10.
[10] *Id.*

the foregoing reasons, the Petitioner has not shown that the Beneficiary qualifies for classification as an individual of extraordinary ability.

ORDER: The appeal is dismissed.

Cite as *Matter of H-O-H-G- Inc*, ID# 2012666 (AAO Feb. 15, 2019)